IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.47 OF 2001

Natraj Chinnappa Nair
alias Kaunder
presently confined at
the YCP, Pune as C/11492 ...Appellant.

V/s

The State of Maharashtra ...Respondent.

Smt. Ruchita Dhuru for the appellant.

Shri A.S. Shitole, APP for the respondent.

CORAM: D.G. DESHPANDE &
V.M. KANADE, JJ.

DATE : 15TH DECEMBER, 2005

ORAL JUDGMENT: (Per V.M. KANADE, J.)

1. The appellant was convicted by the Court of Sessions for the offence punishable under section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for life and to pay fine of Rs 500/- and, in default, to suffer rigorous imprisonment for three months. He was also convicted for an offence punishable under section 309 of the Indian Penal Code and was sentenced to suffer simple imprisonment for three months.

2. The prosecution case in brief is that the accused killed his wife and, thereafter, tried to commit

suicide by consuming TIK-20 poison. He was brought to the Police Station by his mother and, thereafter, he was admitted in the hospital. The police went to his residence and found that one woman was lying in an injured condition in the room and she was sent to Rajawadi Hospital. However, before she could be admitted in the hospital, she was declared dead by the doctor on duty. The complaint was registered against the accused. Further, investigation was carried by P.I. Shirole. The charge-sheet was filed against the accused under section 302 and 309 of the Indian Penal Code. The trial court convicted the accused on the basis of the evidence which was adduced by the prosecution. The learned counsel appearing on behalf of the appellant has taken us through the judgment and order of the trial court as also the oral and documentary evidence on record. The prosecution examined 11 witnesses and the case of the prosecution is based on the circumstantial evidence. The law of the appreciation of evidence is quite well settled. The Supreme Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra reported in **AIR 1984 SC 1622** in paras 150, 151 and 152 has observed as under:-

"150. It is well settled that the prosecution

must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the Court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a Court.

151. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is Hanumant Vs. State of Madhya Pradesh, 1952 SCR 1091 : (AIR 1952 SC 343). This case has been uniformly followed and

applied by this Court in a large number of later decisions up-to-date, for instance, the cases of Tufail v. State of Uttar Pradesh, (1969) 3 SCC 198 and Ramgopal vs. State of Maharashtra, AIR 1972 SC 656. It may be useful to extract what Mahajan J. has laid down in Hanumant's case (at pp. 435-46 of AIR) (supra):

. "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made:

"certainly", it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from

sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused,that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion, consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

Similarly, in a recent judgment, the Supreme Court in the case of State of Haryana Vs. Jagbir Singh and another reported in **2003 CRI.L.J. 5054** has also reiterated various rules which have to be followed by

the court while appreciating the circumstantial evidence.

3. P.W. 1 - Balwant Patil is the complainant. P.W. 2 - Gangubai Chougle is the neighbour who was residing near the house of the accused. This witness did not support the prosecution case and was declared hostile. P.W. 3 - Anil Dhas is the rickshaw driver who has narrated the sequence of events and has stated that he brought the accused and his wife Surya to his house in his rickshaw prior to the incident. P.W. 4 - Prakash Ranshwarye is the panch witness, who has proved the place of offence panchanama. The TIK-20 bottle and a glass and an iron rod was attached from the house of the accused. P.W. 5 - Tulsibai Nair is the mother of the accused who brought the accused to the Police Station in a taxi. She did not support the prosecution case and was declared hostile by the prosecution. P.W. 6 - Urmila Ingle was the Casualty Medical Officer in Rajawadi Hospital on 21/7/1998 when the accused was brought in the hospital. P.W. 7 - Sanjay Sagar was the panch in whose presence the clothes of the accused were attached when he was admitted in the Rajawadi Hospital. He also witnessed recovery of the chopper and the blouse at the instance of the accused. P.W. 8 - Maruti Vishvasrao was, at

the relevant time, in the Police Station when the accused was brought by his mother. P.W. 9 - Ashok Shinde carried the post-mortem on the dead body of Surya Natraj Nair. He also produced Chemical Analyser's Certificate of the blood o Surya. P.W. 10 - Suresh Nirmal was, at the relevant time, the API and had accompanied the P.I. Shirole at the place of the offence. P.W. 11 - Chintaman Shirole carried out the investigation.

4. P.W. 3 - Anil Dhas has stated in his evidence that he was a rickshaw driver and he used to ply rickshaw in the area of Ghatkopar-Chembur. He knew the accused who also used to ply rickshaw. He has stated that on 21/7/1998 at about 9.00 to 9.15 a.m., the accused came to him and told him that his father-in-law was dead and a message had to be given to his relatives. Anil, therefore, went along with the accused to P.L. Lokhandi Marg in his rickshaw where he took one woman with him in rickshaw and told him to go to Chita Camp, Trombay. The accused asked Anil to halt his rickshaw at Trombay. He, thereafter, took the woman inside the Chita Camp and they both returned after about 10 to 15 minutes. He then took them to P.L. Lokhandi Marg in his rickshaw where the lady was dropped at that place. Then the accused told

him to take the rickshaw to Chembur Phata and, at that time, he purchased one Gazara and again he took his rickshaw to the room of the accused and brought his wife Surya with him. Thereafter, he asked him to take the rickshaw to Chembur, Shell Colony where his mother used to reside. P.W. 3 has further stated that immediately both of them sat in the rickshaw and the accused started abusing his wife and when they reached the house of the mother of the accused, both husband and wife got down from the rickshaw and went to the house. They returned after 10 to 15 minutes and the accused asked him to take him back to the house. P.W. 3 took the accused Natraj and his wife Surya back to his room in Chembur. He has stated that as soon as both of them got down from rickshaw, the accused starting beating his wife. P.W. 3 - Anil tried to passify Natraj. His other two friends also tried to passify Natraj. However, the accused - Natraj abused them and told them that they should not interfere with the quarrel between the husband and wife. He, therefore, went to his house. After he had taken his meals, the accused came back to him and told him to call his mother as the quarrel had taken place between him and his wife. At that time, the time was 1.30 to 1.45 p.m. P.W. 3 went to the house of the mother of the accused in rickshaw and brought her to the room of

the accused. At that time, time was 2.30 p.m. He left his mother on the road and went home. He later on learnt that the accused had murdered his wife.

5. P.W. 5 - Tulsibai Nair, the mother of the accused, was declared as hostile. However, she has stated in her examination-in-chief that the two boys had come to her house on 21/7/1998 and informed her that her son was quarrelling and they took her towards the house of the accused. She got down near a bridge from the rickshaw and beneath the bridge she found that her son was lying there and his house was at a long distance from the said place. One bottle was lying by the side of his son and, therefore, she went to the Police Station. Though she has not admitted having gone to the room in which the accused was residing, she has admitted that her son had consumed something and she had taken him to the Police Station. This witness, though does not support the prosecution case, in respect of the incident, has corroborated the statement of the other witnesses to the extent that her son had consumed poison and she had taken him to the Police Station.

6. P.W. 7 - Sanjay Sagar is examined as panch witness in respect of the attachment of the pants and

shirt of the accused as also in respect of the recovery of chopper and one blouse at the instance of the accused. He has stated that on 1/8/1998, the accused voluntarily agreed to show the place where he had concealed the chopper. Accordingly, he took them near rickshaw which was parked near Amarmahal Bridge and removed one chopper and one blouse which was kept under the rear side under the seat of the rickshaw. Though, this witness has been cross-examined, he was not shaken in the cross-examination. He also identified the chopper and the blouse in the Court as also the pants and shirt of the accused which was attached by him. This is another strong circumstance which indicates the involvement of the accused in the said offence. The panchanama of the scene of offence shows that the deceased was lying in the room in a pool of blood and she was wearing saree and peti-coat.

She was not wearing the blouse.

7. P.W.1 - Balwant Patil who recorded the complaint and has also corroborated the fact that the P.W.5 came to the Police Station alongwith the accused, has further stated that after P.W.5 informed him that her son had consumed TIK-20 poison, he went near the taxi in which the accused was kept. He asked him what had happened and the accused informed him that he has

assaulted his wife and he also had consumed TIK-20. P.W. 1, therefore, sent him to Rajawadi Hospital in the same taxi alongwith Police Constable Tikhe. Thereafter, he went to the house of the accused where he saw the woman lying in a pool of blood. He shifted the injured woman to the Rajawadi Hospital. However, she was declared dead by the doctor.

8. P.W. 4 - Prakash Ranshwarye was a panch who prepared the panchanama of the articles which were found in the room of the accused. He has stated that one TIK-20 bottle and one glass and one rod was found which was stained with blood. There was blood in the room and the bottle was smelling TIK-20.

9. P.W. 6 - Dr. Ms. Urmila Devendra Ingle has stated that the accused was admitted in the Hospital and after he was examined, she found that he had consumed poison. She has also stated that one lady Surya Natraj Nair was brought to the hospital.

10. P.W. 9 - Dr. Ashok Gangaram Shinde who performed the post-mortem of deceased Surya, has stated that there were 22 incised wounds on the head by the sharped aged weapon. He has stated that all the injuries were possible by the weapon which was

before the court viz. the chopper.

11. P.W.11 - Chintaman Pujaram Shirole has stated the steps which he has taken for the investigation of the case.

12. In view of the aforesaid evidence, in our view, the prosecution has clearly proved that the accused was responsible for the death of the deceased Surya. Anil Dhas, the friend of the accused has seen the accused quarrelling with the deceased when he dropped both of them to the house. The deceased was last in the company of the accused when he was assaulting her and while he was taking her to the room. After the assault, he consumed TIK-20. He was initially taken to the Police Station by his mother P.W.5. and, thereafter, to the hospital where he was treated by the doctor. The deceased died as a result of several incised injuries in her body which were caused by a Chopper. The prosecution, therefore, has established that Surya, the wife of the accused, had met with homicidal death. The recovery of the Chopper and the Blouse at the instance of the accused is another circumstance which conclusively establishes that the accused was in the room and had removed the blouse of his wife and thereafter had assaulted her with the

Chopper.

13. In our view, the prosecution has established beyond the reasonable doubt that the accused has committed the said offence. There were as many as 22 incised wounds on the body of the deceased which were caused by a Chopper. The prosecution, therefore, has established that the accused has committed an offence punishable under section 302 of the Indian Penal Code. The submissions made by the learned counsel appearing for the appellant, therefore, cannot be accepted. The appeal is accordingly dismissed.

(D.G. DESHPANDE, J.)

(V.M. KANADE, J.)